



United States
General Accounting Office
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Office of the General Counsel

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January 6, 1999

The Honorable Phil Gramm
Chairman
The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Securities and Exchange Commission: Regulation of Exchanges and
Alternative Trading Systems

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC), entitled "Regulation of Exchanges and Alternative Trading Systems" (RIN: 3235-AH41). We received the rule on December 10, 1998. It was published in the Federal Register as a final rule on December 22, 1998. 63 Fed. Reg. 70844.

The final rule, consisting of new SEC rules and rule amendments, contains Rules 3a1-1 and 3b-16 which allow alternative trading systems to choose whether to register as national securities exchanges, or to register as broker-dealers, depending on their activities and trading volume. In addition, Regulation ATS will require alternative trading systems that trade a certain volume of securities to make their best prices known to the public and allow non-subscribers access to those prices. The final rule also amends Rules 6a-1, 6a-2, and 6a-3 regarding registration as a national securities exchange.

Enclosed is our assessment of the SEC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the SEC complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Securities and Exchange Commission is Thomas McCool, Director, Financial Institutions and Markets Issues. Mr. McCool can be reached at (202) 512-8678.

Robert P. Murphy
General Counsel

Enclosure

cc: The Honorable Jonathan G. Katz
The Secretary of the Securities and
Exchange Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"REGULATION OF EXCHANGES AND ALTERNATIVE TRADING SYSTEMS"
(RIN: 3235-AH41)

(i) Cost-benefit analysis

Although the SEC was not required to prepare a cost-benefit analysis of the rule, it did request commenters to provide analysis and data regarding the proposed rule. No comments concerning cost or benefits were received.

The SEC finds that the majority of the costs will be incurred in complying with the information collections required to be completed if entities decide to register as national securities exchanges or broker-dealers.

The SEC believes that the benefits, such as the encouragement of innovation, accommodation of the growing role of technology, improving the transparency for market participants, and ensuring the stability of the trading systems with a significant role in the markets, will outweigh the costs of the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking. The IRFA provides the information required by sections 603(b)(1), (b)(2), (b)(3), and (b)(4). It describes the reasons for the proposed agency action, its objectives, the legal basis, and the reporting and recordkeeping and other compliance requirements of the proposed rule.

The final rule incorporates the Final Regulatory Flexibility Analysis consistent with section 604 and discusses the alternatives considered for the various SEC rules affected or amended by the final rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the SEC is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive order

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedure contained in 5 U.S.C. § 553.

On April 29, 1998, the SEC published a Notice of Proposed Rulemaking in the Federal Register. 63 Fed. Reg. 23504. In response, the SEC received 70 comment letters. It responds to the comments in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

OMB has reviewed the various collections and has approved them. It issued the control numbers as follows:

- Form 1, Rules 6a-1 and 6a-2, control number 3235-0017;
- Rule 6a-3, control number 3235-0021;
- Rule 17a-3(a)(16), control number 3235-0508;
- Rule 17a-4(b)(10), control number 3235-0506;
- Rule 19b-5 and Form PILOT, control number 3235-0507;
- Rule 301, Form ATS, and Form ATS-R, control number 3235-0509;
- Rule 302, control number 3235-0510; and
- Rule 303, control number 3235-0505.

Statutory authorization for the rule

The final rule was issued under the authority of 15 U.S.C. § 78 et seq., particularly sections 3(b), 5, 6, 11A, 15, 17(a), 17(b), 19, 23(a), and 36 of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78c, 78e, 78f, 78k-1, 78o, 78q(a), 78q(b), 78s(b), 78w(a), and 78mm.

Executive Order No. 12866

As the rule was promulgated by an independent regulatory agency, it is not subject to the review requirements of Executive Order No. 12866.